IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6397 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKAR KIMMATRAM SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/09/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt.28.3.2000 Annexure : A passed by Respondent No.2 which he has passed in exercise of powers conferred

upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has referred to seven criminal cases in the grounds of detention against the detenu. The order of detention is passed by the detaining authority on 28th March, 2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Shri Prajapati, the learned advocate for the petitioner has argued that after service of order of detention on the petitioner,the petitioner made a representation to the detaining authority on 29.5.2000 and the learned advocate for the petitioner received a letter dt.31.5.2000 from the detaining authority wherein it has been stated that the representation has been examined and it has been decided not to revoke the detention order. He has argued that looking tothe provisions of Sec.3(3) of the Act, the detaining authority had become functus officio after passing an order of detention, after expiry of 12 days and therefore he had no jurisdiction to decide the representation. Inspite of this, he has examined the representation and rejected it. Shri Prajapati has argued that in view of the above legal position, the detaining authority ought to have only forwarded the said representation dt.29.5.2000 to the State Government i.e. respondent no.1. By not doing so, he has exercised the powers not vested in him. While exercising the power of rejecting the said representation by the detaining authority, it had no such powers. Therefore, order becomes illegal because the representation has not been decided by proper authority at the earliest, and thus the order is bad in law and the same is required to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 28.3.2000 passed by Respondent No.2 with respect to detenu which is at Annexure: A is quashed and set aside. The detenu is ordered to be released forth with, if he is

not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 28.09.2000. (H.H.MEHTA,J.)
ccshah